National Labor Relations Board Weekly Summary of NLRB Cases

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Carnival Carting, Inc. (29-CA-20586, 22552; 345 NLRB No. 63) Woodside, NY Sept. 20, 2005. The Board granted the General Counsel's motion for partial summary judgment with respect to the allegations in the compliance specification's paragraphs I, II, VII, and VIII pertaining to the backpay period and amount of backpay due Frank Mendez. It remanded the case to the Regional Director to schedule a hearing before an administrative law judge limited to the issues of interim earnings and expenses, net backpay, and medical expenses. [HTML] [PDF]

In an unpublished order dated November 16, 2000, the Board directed the Respondent, among other things, to make Mendez whole for any loss of earnings and other benefits suffered as a result of his discharge. On April 24, 2001, the U.S. Court of Appeals for the Second Circuit issued its judgment enforcing in full the Board's order.

A controversy having arisen over the amount of backpay due Mendez, the Regional Director issued a compliance specification and notice of hearing identifying the amount of backpay due and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations. The Respondent's answer generally denied the allegations in the compliance specification. Finding that the Respondent's answer failed to meet the specificity requirements of Section 102.56(b) and (c) of the Board's Rules and Regulations, the General Counsel filed a motion for partial summary judgment.

(Chairman Battista and Members Liebman and Schaumber participated.)

General Counsel filed motion for partial summary judgment July 7, 2005.

Positive Electrical Enterprises (3-CA-25037; 345 NLRB No. 67) Mattydale, NY Sept. 23, 2005. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing since August 20, 2002, to adhere to the terms of the June 1, 2002, through May 31, 2003 "residential wiring agreement" and the June 1, 2000, through May 31, 2003 "inside construction agreement" and all successive labor agreements between the Finger Lakes New York Chapter National Electrical Contractors Association (NECA) and Electrical Workers IBEW Local 43. The judge found that the Respondent signed letters of assent on August 20, 2002 with the Union that bound the Respondent to the terms and conditions of the collective-bargaining agreements. [HTML] [PDF]

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Electrical Workers IBEW Local 43; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Syracuse, March 15-16, 2005. Adm. Law Judge Margaret G. Brakebusch issued her decision May 17, 2005.

Topor Contracting, Inc. (3-CA-24557; 345 NLRB No. 60) Buffalo, NY Sept. 19, 2005. The Acting General Counsel filed a motion for default judgment on the ground that the Respondent failed to file an answer to the complaint. The Board, however, denied the motion because the Acting General Counsel failed to prove service of the complaint or the motion for default judgment on the Respondent. [HTML] [PDF]

The Acting General Counsel alleged in his motion that the complaint was served on the Respondent by certified mail and attached various documents in support thereof. The Board found that the documents do not establish that the complaint and other correspondence from the General Counsel and the Acting General Counsel were sent to the Respondent's correct address. It found discrepancies between the Respondent's address as stated on the charge and the affidavit of service attached to the charge. The Board also noted that the Acting General Counsel did not submit return post office receipts for the complaint or reminder letters; there was no indication whether the documents were actually delivered or returned by the Postal Service; and did not submit an affidavit of service with the motion for default judgment. The Board wrote:

Section 102.24(a) of the Board's Rules and Regulations states that all motions filed with the Board shall be accompanied by an affidavit of service on the parties.

In view of the inconsistencies in both the street addresses and zip codes to which the General Counsel and Acting General Counsel have sent documents to the Respondent, the absence of return post office receipts or any indication whether the documents were delivered or returned by the Postal Service, the Acting General Counsel's failure to submit an affidavit of service of the Motion for Default Judgment, and considering the Respondent's *pro se* status, we find that the Acting General Counsel has failed to demonstrate that service of the complaint and Motion for Default Judgment was perfected.

The Acting General Counsel's motion was denied without prejudice to its renewal when it can be demonstrated that the Respondent has been properly served with the complaint and motion for default judgment.

(Chairman Battista and Members Liebman and Schaumber participated.)

Acting General Counsel filed motion for default judgment July 26, 2005.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

California Gas Transport, Inc. (Teamsters Local 104) El Paso, TX September 16, 2005. 28-CA-19645, et al., 28-RC-6316; JD(SF)-67-05, Judge Gregory Z. Meyerson.

Advocate South Suburban Hospital (Service Employees) Hazel Crest, IL September 21, 2005. 13-CA-42246; JD-75-05, Judge Karl H. Buschmann.

Horizon Group of New England (Southern New Jersey Laborers District Council and Laborers Local 1153) Albany, NY and Trenton and Newark, NJ, September 21, 2005. 22-CA-26813, 26441; JD(NY)-43-05, Judge Steven Fish.

Pavilion at Forrestal Nursing and Rehabilitation (SEIU 1199, New Jersey Health Care) Princeton, NJ September 21, 2005. 22-CA-26628; JD(NY)-44-05, Judge Eleanor MacDonald.

Bolivar-Tees, Inc. (Sheet Metal Workers Local 36) Overland Park, KS September 21, 2005. 17-CA-19569, 19632; JD(SF)-66-05, Judge Albert A,. Metz.

Gary Krezman Electric, Inc. d/b/a G & S Electric (Electrical Workers [IBEW] Local 340) Sacramento, CA September 13, 2005. 20-CA-32108; JD(SF)-61-05, Judge Clifford H. Anderson.

Oasis Mechanical, Inc. (Plumbers Local 344) Oklahoma City, OK September 14, 2005. 17-CA-23050; JD(SF)-63-05, Judge Thomas M. Patton.

Southern California Gas Co. (Utility Workers Local 132) Los Angeles, CA September 14, 2005. 21-CA-36039; JD(SF)-64-05, Judge Lana H. Parke.

SCR Painting, LLC PBN, LLC, and Liquid Systems, et al. (Painters District Council 7) Pleasant Prairie, WI September 14, 2005. 30-CA-16577-1, 16813-1; JD(SF)-62-05, Judge Joseph Gontram.

NO ANSWER TO COMPLAINT

(In the following cases, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Proper Steel Erectors, Inc. and its alter ego B & M Steel Erectors (Iron Workers Local 60, 33, 9, 440, 6 and 12) (3-CA-24700; 345 NLRB No. 62) Pompey and Central Square, NY September 19, 2005. [HTML] [PDF]

Washington Sprinkler, Inc. (Road Sprinkler Fitters Local 669) (5-CA-31925, 32016; 345 NLRB No. 64) Washington, DC September 21, 2005. [HTML] [PDF]

NO ANSWER TO COMPLIANCE SPECIFICATION

(In the following case, the Board granted the Acting General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the compliance specification.)

Mary Cannon t/a Enviro-Tech (Laborers Local 332) (4-CA-33146, 33227; 345 NLRB No. 65) Philadelphia, PA September 22, 2005. [HTML] [PDF]

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Research Foundation of the State University of New York Office of Sponsored Programs, Albany, NY, 3-RC-11184, September 20, 2005 (Chairman Battista and Members Liebman and Schaumber)

Research Foundation of the City University of NY, New York, NY, 2-RC-22721, September 20, 2005 (Chairman Battista and Members Liebman and Schaumber)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Sysco Food Services of Seattle, Inc., Kent, WA, 19-UC-724, September 20, 2005 (Chairman Battista and Members Liebman and Schaumber)

Miscellaneous Board Orders

ORDER [granting review with respect to the alleged supervisory status of Employer's news producers and denying in all other respects]

Emmis Communications, Inc. d/b/a KOIN-TV, Portland, OR, 36-RC-6310, September 20, 2005 (Chairman Battista and Member Schaumber; Member Liebman dissenting in part)
